

**BACKGROUND CHECK POLICY****Effective: April 1, 2006****I. Introduction**

Performing background checks on individuals who work with vulnerable people is a component of preventing abuse, neglect and exploitation. This policy describes when a background check is required, what the components of a background check are and what is done if a background check reveals a potential problem.

Background checks supplement but do not replace reference checks. Background checks should never be relied upon as a substitute for personal contact with former employers or others who are in a position to have personal knowledge about the worker's qualifications to work with vulnerable people.

**II. Definitions**

A. **"Background check"** includes all of the following:

1. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department for Children and Families (DCF) child abuse registry;
2. A request for information about all substantiated findings of abuse, neglect, and exploitation directed to the Department of Disabilities, Aging and Independent Living (DAIL), Division of Licensing and Protection adult abuse registry;
3. A request for information about all criminal convictions directed to the Vermont Crime Information Center (VCIC);
4. An on-line search of the Exclusions Database of the federal Department of Health and Human Services' Office of Inspector General as [www.oig.hhs.gov](http://www.oig.hhs.gov).
5. For volunteers or workers who will be paid to transport a person by motor vehicle, a complete Motor Vehicle Driver Record from the Vermont Department of Motor Vehicles.

B. **"Person who receives services"** means an individual who receives support and/or services through a program administered by the Department of Disabilities, Aging and Independent Living (DAIL), including, but not limited to personal services, community supports, adult day services, housing and home supports, case management, service planning and coordination, respite care, companion care, clinical or other mental health services; crisis services, supported employment services, transportation, nutrition, nursing, and other kinds of care for which a worker receives reimbursement. Specific services include, but are not limited to:

- Adult Day Services
- Attendant Services
- Children's Personal Care Services
- Choices for Care Waiver Services (home-based, nursing facility and enhanced residential care)

- Developmental Disability Services
- High Tech Services
- Homemaker Services
- Traumatic Brain Injury Waiver Services

The term includes individuals who self-, family- or surrogate-manage their services. The term does *not* include individuals who receive supports through the Flexible Family Funding program, the Dementia Respite Program, the National Family Caregiver Support Program, or Flex Funds.

- C. **“Agency or provider”** means an organization that operates programs/services administered by DAIL for any “person who receives services.”
- D. **“Worker”** means an individual who volunteers (including those paid a stipend or expense reimbursement) and an individual who is employed or contracted by an agency/provider (including contracted home providers, shared living providers, developmental home providers, foster care providers), surrogate, family member or person who receives services.

### **III. Requirements for Background Checks**

- A. Background checks are ***required*** for all workers who are paid with funds administered by DAIL and who:
1. Provide care to a person who receives services; or,
  2. Manage funds or services on behalf of a person who receives services.
- B. Background checks are ***required*** for any volunteers recruited and placed by an agency or provider who will work alone with a person who receives services.
- C. Background checks are ***recommended*** for respite workers hired by families through the Flexible Family Funding program, the Dementia Respite Program, the National Family Caregiver Support Program (NFCSP) or Flex Funds. Families may use an Intermediary Service Organization (ISO) to complete the background check for a nominal fee. Providers and agencies are required to notify families of this option.
- D. In addition to meeting the requirements of this policy, facilities or agencies that are state licensed and/or federally certified must follow abuse prevention protocols as specified in applicable state and federal regulations.

### **IV. Responsibility for Ensuring that Background Checks Are Completed**

- A. Any agency or provider employing a worker or supervising a volunteer is responsible for ensuring that the required background checks are completed, or for arranging for the required checks to be completed by an Intermediary Service Organization (ISO).
- B. An Intermediary Services Organization (ISO) is responsible for ensuring that the required background checks are conducted for any workers who will be paid through the ISO. In addition to the required background checks, the ISO shall conduct any recommended background checks requested by an employer/contractor.

- C. Employers and contractors who will be paying workers through the ISO are responsible for obtaining the signed and completed forms necessary for the background checks to be completed.

**V. Payment for Background Checks**

Applicants for employment shall not be charged for the costs of background checks. The costs of background checks are considered part of the administrative costs for an agency or provider, and are part of the contract for services of an ISO.

**VI. Employment Pending Completion of Background Checks**

- A. An offer of employment or contract may be made contingent upon a satisfactory background check.
- B. A worker, contractor or volunteer may, at the discretion of the employer or contracting entity, provide services to a person pending receipt of the results of the background check, but under no circumstances may a worker or contractor be paid for longer than sixty (60) days without receipt of a completed background check.

**VII. Periodic Updating of Background Checks**

Subsequent to the initial background check, an agency or provider shall have a policy for conducting periodic random checks of workers and volunteers covered above.

**VIII. Restriction Upon Paying Persons with a History of Substantiated Abuse, Neglect, or Exploitation, or History of Certain Crimes**

Funds administered by DAAIL may not be used to employ, place or contract with a person who has:

- A. A substantiated record of abuse, neglect, or exploitation of a child or a vulnerable adult;
- B. Been excluded from participation in Medicaid or Medicare services, programs, or facilities by the federal Department of Health and Human Services' Office of the Inspector General; and/or,
- C. A criminal conviction for an offense involving bodily injury, abuse of a vulnerable person, a felony drug offense, or a property/money crime involving violation of a position of trust, including, but not limited to:

Aggravated assault  
Aggravated stalking  
Aggravated sexual assault  
Assault and robbery  
Manslaughter  
Assault upon law enforcement  
Cruelty to children  
Arson  
Extortion  
Abuse, neglect, or exploitation

Hate motivated crime  
Kidnapping  
Lewd and lascivious conduct  
Simple assault  
Sexual assault  
Murder  
Domestic assault  
Stalking  
Embezzlement  
Recklessly endangering another

of a vulnerable adult or child

person while driving

## IX. Questionable Background Check Results

If a background check reveals a non-restricted conviction or motor vehicle violation, the employer may at his/her discretion hire or contract with the worker.

## X. Variances

Variances of this policy may be granted only under exceptional circumstances. The agency or provider employing or contracting with a worker or supervising a volunteer is responsible for the decision to grant a variance under this policy. For individuals who are employed or contracted by a home provider (e.g., developmental home, shared living, foster care) surrogate, family member or person who receives services, a request for variance, including a copy of the information under question, must be made in writing to:

Deputy Commissioner  
Division of Disability and Aging Services  
Department of Disabilities, Aging and Independent Living  
Weeks Building, 103 South Main Street  
Waterbury, VT 05671-1601

The following factors must be considered in the decision to grant or deny any variance:

- A. Age of the individual at the time of the crime or substantiation;
- B. Nature and seriousness of the crime (e.g., were there circumstantial reasons; was it related to a specific relationship, etc.);
- C. The person's involvement with the criminal justice system and/or child or adult abuse, neglect or exploitation systems since the occurrence;
- D. The amount of time that has passed since the substantiation or conviction;
- E. Willingness of the individual to pursue expungement of any child or adult abuse substantiation;
- F. Disclosure to the person receiving services, their surrogate, and legal guardian (if there is one).

Written documentation of the decision to grant a waiver must be made stating the rationale and any conditions.